

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: George Kramer Clinton County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2008-AQ- 40 NO. 2008-SW- 28
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TO: George Kramer
1662 Highway 67
Clinton, IA 52732

Curtis Beason, Attorney
Lane & Waterman, LLP
220 N. Main Street, Suite 600
Davenport, IA 52801

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and George Kramer for the purpose of resolving solid waste and air quality violations which have occurred at property owned by George Kramer and located in Section 1, Township 82 N, Range 6 NE SE, Clinton County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative order should be directed to:

Relating to technical requirements:

Bert Noll, Environmental Specialist
DNR Field Office #6
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality), and the rules promulgated or permits issued pursuant to that

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part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. DNR Field Office No. 6 received complaints on September 14 and September 17, 2007, that open burning of paint and insulated wire was occurring on property located at 1662 Highway 67, Clinton in Clinton County (the site). The site is owned by George Kramer.

2. On September 17, 2007, Kurt Levetzow and Bert Noll of DNR Field Office No. 6 visited the site and observed an area where residential waste had been burned. In the same area, the DNR personnel observed discarded gas and oil cans and multiple piles of electric motor coils that had been open dumped and appeared to have been recently burned. The DNR personnel also observed barrels containing capacitors from household appliances as well as several discarded refrigerators, which indicated demanufacturing of appliances had occurred.

3. Previous open burning has been investigated at the site. In January 2003, DNR personnel investigated a complaint that wire and other discarded materials were being burned at the site. No illegal burning could be confirmed at that time, but Mr. Kramer did receive a copy of the State of Iowa's open burning regulations at that time.

4. On October 15, 2007, a Notice of Violation letter (NOV) was sent to Mr. Kramer for open burning of combustible materials in violation of 567 IAC 23.2 and for demanufacturing appliances without an Appliance Demanufacturing Permit in violation of 567 IAC 118.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in rules 23.2(2) (variances) and 23.2(3) (exemptions). The above facts demonstrate violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. The above facts demonstrate non-compliance with this provision.

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5. 567 IAC 118 defines demanufacturing as the removal of components from discarded appliances, including but not limited to, polychlorinated biphenyl-containing (PBC) capacitors and ballasts, mercury-containing components, and refrigerants. 567 IAC 118.2(1) states in part, "No person that is now or plans to be involved in the demanufacturing of appliances is allowed to conduct any demanufacturing activities until an Appliance Demanufacturing Permit (ADP) has been obtained from the DNR." The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the DNR orders and George Kramer agrees to do the following:

1. Pay a penalty of \$1,500.00 within 30 days of the date this order is signed by the director.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the director to assess administrative penalties, a penalty of \$1,500.00 is assessed. The penalty must be paid within 30 days of the date this order is signed by the director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – George Kramer has achieved an economic benefit from open burning, improper waste disposal, and improper demanufacturing of appliances. He has saved time, labor, and landfill costs by not timely and properly removing, transporting, and disposing of the solid wastes from the site. He also saved time and money by not acquiring the proper permit to demanufacture appliances. Based on these considerations, \$100 is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may

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pollute groundwater, and pose a risk to human health and the environment. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$700.00 is assessed for this factor.

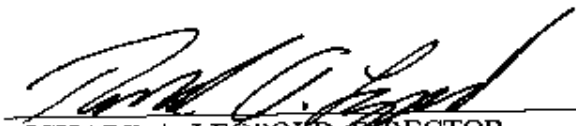
Culpability – George Kramer has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Therefore, \$700.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of George Kramer. For that reason, George Kramer waives his right to appeal this order or any part thereof.


VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 2 day of
October, 2008.



GEORGE KRAMER

Dated this 8 day of
August, 2008.